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13 Attorneys for Defendants

14 HSBC MORTGAGE CORPORATION (USA) and
15 HSBC BANK USA, N.A.

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

18 SAN FRANCISCO DIVISION

19 Philip Wong, Frederic Chaussy, and Leslie
20 Marie Shearn, individually, on behalf of all
21 others similarly situated, and on behalf of
22 the general public,

23 Plaintiffs,

24 v.

25 HSBC Mortgage Corporation (USA);
26 HSBC Bank USA, N.A.; and DOES 1
27 through 50, inclusive,

28 Defendant.

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF KRISTOFER A.
POGORZELSKI IN OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION FED. R. CIV. P. 23**

Date: October 10, 2008
Time: 9:00 A.M.
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

29 I, Kristofer A. Pogorzelski, hereby declare and state:

30 1. I am over the age of 18, and I have personal knowledge of the facts listed
31 below. If called as a witness, I would testify to the following.

32 2. Since June 2006, I have been employed by HSBC Mortgage Corporation USA
33 Inc. ("HMCU") as a Retail Mortgage Consultant (commonly known as a "Loan Officer").

34 3. I am currently assigned to the New Jersey Region, which encompasses two
35 Loan Production Offices ("LPO"), one located in Hoboken, New Jersey and the other located in
36

1 Parsippany, New Jersey. Anthony Maseria is the Regional Sales Manager for the New Jersey region
2 and my direct boss.

3 4. Although I am not assigned to any particular office, I have a desk available for
4 me to use in the Hoboken LPO office, located at 5 Marine Plaza, Hoboken, New Jersey. If I need to
5 fax or copy documents relating to a customer's loan application, I can chose to visit the LPO and use
6 its office equipment for this purpose.

7 5. I am the designated Loan Officer to receive mortgage customer referrals from
8 the Journal Square and West Caldwell HSBC Bank branches. While I don't spend a significant
9 amount of time at the branches, I frequently speak with Branch employees to obtain customer
10 referrals. Although I am not required to do so, I cross-sell to my customers financial services
11 offered by the Branch. I believe doing so enhances HSBC's overall business and reputation.

12 6. I tend to focus my sales activities in Hudson, Union and Morris Counties
13 because they are convenient for me based on where I live and the amount of time I spend traveling to
14 meet with customers and business referral sources. I am not, however, limited to servicing just these
15 counties and can work with customers or prospective customers that reside elsewhere within or
16 outside of New Jersey. No one, including Anthony, has ever told me which counties to focus on or
17 from what parts of New Jersey I can obtain clients and client referrals.

18 7. My primary job duty is to market and sell HSBC Residential Mortgages and
19 Home Equity Lines of Credit, which includes Fannie Mae and Freddie Mac loans, ARMs, Jumbo
20 loans and community based or reduced rate mortgages.

21 8. I consider myself overtime exempt and understand I was hired to go out in the
22 field and secure borrowers for these loans. I believe that I am very entrepreneurial; the more loans
23 that I sell, the more money I can earn. I accomplish this by educating customers on the HSBC
24 mortgage products available to them and helping them decide which product best meets their
25 financial and personal needs.

26 9. I consider myself a salesperson and devote approximately 80% of my time to
27 sales duties, during which I work away from the LPO and branches developing business
28 relationships with clients and client referrals so that I can meet my monthly target of \$1,000,000 in

1 loan production.

2 10. It is my understanding that HSBC Mortgage does not have a corporate-wide
3 "sales quota" or quota policy for its Retail Mortgage Consultants. Instead, Anthony has suggested
4 this production quota for the New Jersey Loan Officers to ensure that we are actively performing our
5 sales duties and can succeed financially in this job.

6 11. I do not have a set or defined work schedule and do not record the hours that I
7 work. Each day is different and how I divide my time is up to me and varies each day. The days of
8 the week and the hours that I work are entirely up to me and I believe that the more time I spend
9 developing customers and customer referrals, the more successful I can be in meeting and exceeding
10 my loan production quota. Usually, I average about 40 hours per week, although my hours vary by
11 season; the summer and winter are slow because people are not buying homes or moving and the fall
12 and spring are busier when the real estate market is more active.

13 12. Anthony has never told me when to work or how many hours to work per day
14 or week and I am unaware of any HSBC Mortgage policy governing my work hours. In fact, I
15 usually perform some work every day of the week, whether that means answering or making client
16 calls from my cell phone, sending emails to current or prospective clients, or preparing marketing
17 mailings to send to referral sources. The reason I take client calls at any time is to enhance my
18 relationship with that client and to ultimately ensure that the loan they have purchased or intend to
19 purchase is funded and closed.

20 13. One benefit of this job is the flexibility I have in setting my schedule.
21 Although lately I have been working approximately 40 hours per week, I could chose to work more
22 or fewer hours if I decide to. For instance, if I need to attend to a personal matter during the day, I
23 can do so without obtaining Anthony's permission.

24 14. Generally speaking, I am not obligated to work at or assigned to any particular
25 HSBC Mortgage or HSBC Bank office or location and don't consider any of the branches or LPO to
26 be "my office". I spend the majority of my time working on the road, which includes attending my
27 clients' real estate closings, and meeting with my existing clients, client prospects, and business
28 referral sources (including attorneys, CPAs, real estate agents).

1 15. The only requirements imposed on me by Anthony is to attend a monthly
2 regional sales meeting at the Parsippany LPO (which usually lasts between 2 and 3 hours total) and
3 work one day per week of my choice at the Hoboken LPO.

4 16. On this one "up day" at the Hoboken LPO, I work at my desk, usually from
5 9:00 a.m. until approximately 5:00 p.m., answering telephone calls from prospective mortgage
6 applicants and speaking with referral customers from the Hoboken Bank Branch who are interested
7 in obtaining information about HSBC's mortgage products. I can decide how to spend the remainder
8 of my up day and often use that time developing my "sales pipeline," speaking to my referral sources
9 and performing basic administrative tasks relating to my files (e.g., checking my emails, reviewing
10 clients' loan applications and supporting paperwork, reviewing daily product updates and rate
11 changes, and faxing documents to my clients or the HSBC underwriters). On average, I spend less
12 than 1 hour per week performing administrative and/or clerical work relating to my sales activities.

13 17. When I commenced employment at HSBC Mortgage, I attended a two week
14 training program in Buffalo, New York. During that training program, I learned about HSBC
15 Mortgage's computer programs, its different mortgage products, HSBC Mortgage's underwriting
16 guidelines and the process for obtaining financial information from clients relating to their loan
17 application. Since that time, I have participated in additional, optional web-based and telephone
18 training programs offered by HSBC Mortgage covering a broad array of topics, including regulatory
19 compliance, customer privacy issues, HSBC mortgage products and security of confidential and
20 sensitive customer financial information. Each training session is brief and I can complete it
21 remotely or at the LPO.

22 18. No one at HSBC Mortgage has ever told me how to perform my job and
23 besides from my job description, I am not aware of any written policies describing or discussing a
24 particular process that I need to follow for obtaining sales. As I said, I was hired to go out and
25 generate new mortgage deals and how I do so is entirely up to me.

26 19. I devise my own sales strategies and believe I am very proactive in this
27 respect. Being proactive is important to me for getting loans funded and it is my responsibility to
28 develop my book of business and locate new or repeat business.

1 20. When I work from home, I frequently check my emails, prepare mailings,
2 review my past loan closings, and compare mortgage rates offered by HSBC's competitors (which I
3 share with mortgage customers with whom I am working). I also communicate with former clients
4 in a number of ways, including sending them birthday and "closing date" anniversary cards,
5 emailing them about rate changes and refinancing opportunities and sending out calendar magnets
6 during the holidays. I think these activities strengthen and build my relationship with my former
7 customers and, ideally, will result in me gaining repeat business from them or new business from
8 someone to whom they refer me.

9 21. I also market myself in other ways, such as distributing my business card and
10 HSBC product literature at town fairs and festivals, at a local Polish Cultural organization, and to
11 parents of the children who are playing in the soccer matches I referee in my community.

12 22. I devote significant time to meeting in person with current, potential and
13 former customers and business referral sources. My goal is to obtain a mortgage sale directly from a
14 customer or indirectly through a referral source. I also, from time-to-time, attend my customers'
15 closings. I am not required to do so, but I believe it demonstrates to the attorneys, realtors and
16 customer that I care. My referral sources consist of realtors, attorneys, and CPAs and I visit with
17 these referrals regularly and in person. Sometimes I take these referral sources out for lunch or
18 coffee and other times I will simply deliver to their office HSBC marketing materials describing the
19 different loan products that I can sell to borrowers.

20 23. Overall, I don't have a set number of times I am required to meet with
21 particular customers or referral sources, but the more often I do so, the better my chances are of
22 obtaining business through them.

23 24. Another way I enhance my sales activities is by preparing a yearly business
24 plan. This plan describes in a very general sense my anticipated sales goals and what steps I will
25 take to achieve them. For example, I will list the number of referral sources that I plan to contact or
26 speak with each week, the types of networking events I may attend, and the number of mortgages
27 that I intend to sell each month. I do not believe I am required to prepare the business plan but do so
28 because it helps me focus my sales efforts and allows Anthony to assist me in achieving my financial

1 goals. I create the business plan on my own and I am not aware of any template or form that HSBC
2 Mortgage or Anthony requires me to use for this purpose.

3 25. I work independently and with very minimal supervision from Anthony. I am
4 not required to check in with him or speak with him about my sales activities. Instead, I consider
5 Anthony a resource for me. Anthony and I see each other very infrequently. When we do
6 communicate, I usually initiate the contact via email or phone. I will contact Anthony if I want to
7 discuss my sales strategies and efforts or about issues I am experiencing with the underwriting
8 department or loan approval process. Anthony has made himself available to travel with me on sales
9 calls or when I meet with referral business sources, although I do not recall ever asking him to do so.

10 26. Anthony encourages all of his Loan Officers to participate in a weekly "pipe
11 line" telephone conference, which lasts anywhere between 5 and 15 minutes and which I can take
12 from any location. During these calls, Anthony reviews each Loan Officer's pipeline activity
13 (meaning the mortgage deals I have secured and am moving towards closing) and updates us on new
14 HSBC product offerings. If I have to miss the scheduled call, Anthony allows me to call him at
15 another time to discuss the conference call.

16 27. I frequently attend real estate seminars and trade shows, CPA trade shows,
17 and related conventions. My attendance is optional and the only reason I participate is to enhance
18 my referral network which, in turn, enables me to secure more business from residential loan
19 customers. Overall, I have the discretion and flexibility to determine what networking events I
20 attend and how frequently I do so.

21 28. In addition to my networking and sales activities, I prepare and gather
22 documents for my customers' loan applications. As all loans are different, it is hard to estimate how
23 much time, on average, I devote to this aspect of my job. However, it is certainly less than 20% of
24 my total work hours each week and I am able to multi task and perform sales-related duties while I
25 am completing this paperwork.

26 29. When I commenced employment, and in the summer of 2008, I received a
27 incentive compensation plan from HMCU that describes how I am paid. I don't remember the name
28 of this plan but can confirm that all of my compensation comes from commissions, which are tiered

1 and depend upon how many and the value of the loans that I get funded and closed each month.

2 30. For each loan that I secure, I have the option to "flex" the interest rate, which
3 means I can reduce it by 1/8 of a point for the customer's benefit. I understand and have agreed that
4 by flexing a loan, my commission is reduced by an equivalent amount pursuant to HMCU's flexing
5 guidelines. I do not consider the reduction in my commission a "payroll deduction," especially
6 because I have fully agreed to this arrangement and I have full discretion whether to flex a loan.
7 When I first started with HMCU, I flexed the rate on every other loan. Currently, I do not flex any
8 loans for any customers so I have not had my commission reduced as a result.

9 31. All customers that apply for a loan are required to pay a loan application fee,
10 which is used to pay for the cost of appraising the customer's property. If I chose to waive an
11 application fee, it is entirely up to me. While sometimes my commission is reduced by the amount
12 of the fee I waive, I can ask Anthony to assign the cost to our Cost Center. Each decision is made a
13 on a case by case basis and depends upon the amount and type of loan that I have sold.

14 32. I am aware of this lawsuit because I have received a number of letters from
15 the Plaintiffs' attorneys about it. I have no desire to join or participate in the lawsuit because I
16 believe that HMCU's Loan Officers are properly classified as exempt. In fact, I know one of the
17 named Plaintiffs, Chad Barbieri. I worked with Chad for a few months before his employment
18 ended. I don't believe that Chad's claim has any merit because, from my observations, it didn't
19 appear he worked more than 40 hours a week.

20 //I declare under penalty of perjury under the laws of the State of New Jersey and the United
21 States of America that the foregoing declaration is true and correct to the best of my personal
22 knowledge. Executed this 19 day of September 2008 in Hoboken, New Jersey.

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26 
27 KRISTOFER A. POGORZELSKI
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DECL. OF K. POGORZELSKI/OPP. TO CLASS
CERT.

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